

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**ALTON & SOUTHERN
RAILWAY CO.,**

Plaintiff,

vs.

**BROTHERHOOD OF
RAILROAD SIGNALMEN,**

Defendant.

8:16CV360

ORDER

This matter is before the court after a review of the court file and pursuant to NECivR 41.2, which states in pertinent part: “At any time, a case not being prosecuted with reasonable diligence may be dismissed for lack of prosecution.” Further, Federal Rule of Civil Procedure 4(m) establishes a 90-day time limit for service of process on any defendant in a civil case, absent a showing of good cause. Specifically, the rule mandates:

If a defendant is not served within 90 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

In this case the complaint was filed on July 21, 2016. **See** Filing No. 1. On the same date, the plaintiff filed a motion for temporary restraining order. **See** Filing No. 2. The court denied the plaintiff’s motion on July 22, 2016, after a hearing. **See** Filing No. 9. The plaintiff has taken no further action against the defendant. While the defendant was represented by counsel during the preliminary injunction hearing, no summons has been issued, no evidence of service filed, and the defendant has not filed an answer.

It remains the plaintiff’s duty to go forward in prosecuting the case. In this case, the time elapsed for service, however the defendant has been represented by counsel in this matter. Under the circumstances, the plaintiff will have an opportunity to make a

showing of service or provide good cause for the failure of timely service or the action must be dismissed against the defendant. Upon consideration,

IT IS ORDERED:

The plaintiff has until the close of business on **November 16, 2016**, to file evidence of service for the defendant or show cause why this case should not be dismissed.

Dated this 1st day of November, 2016.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge